IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
JOHN ROBERDEAU,	§	CASE NO. 00-31318-SAF-7
ROBERT M. GEISLER,	§	CASE NO. 00-31319-SAF-7
STAGE FRIGHT, L.L.C.,	§	CASE NO. 00-31320-SAF-7
	§	(Administratively consoli-
DEBTORS.	§	dated under case no.
	§	00-31318-SAF-7)

MEMORANDUM OPINION AND ORDER

Briarpatch Limited, L.P., and Gerard F. Rubin move the court for an award of sanctions against John Roberdeau and Robert M. Geisler for abuse of process. Briarpatch and Rubin complain that Roberdeau and Geisler abused the bankruptcy process by filing an inappropriate grievance against their attorney Charles B. Hendricks with the State Bar of Texas. The court conducted an evidentiary hearing on the motion on June 12, 2001. Roberdeau and Geisler appeared by counsel. But, neither appeared in person.

By memorandum opinion and order entered June 25, 2001, the court issued several findings of fact and conclusions of law. The court ordered Roberdeau and Geisler to appear on August 14, 2001, at 1:30 p.m., to show cause why they should not be held in

civil contempt of court. See Bankruptcy Rule 9020. The court directed Roberdeau and Geisler to address whether their actions, to publish their grievance against attorney Hendricks to persons engaged in the global settlement process mandated by court order on the eve of the settlement conference, undermined the sanctity of the court's order entered March 8, 2001. If held in contempt, then they were instructed to further show cause why the sanctions should not include: (1) a directive that they withdraw their grievance against attorney Hendricks; (2) a directive that they withdraw their litigation against the trustee Scott Seidel, Passman & Jones, Stephen Pate, Briarpatch and Rubin; (3) a directive that they compensate Briarpatch, Rubin and Hendricks for their expenses; and (4) a directive that they be enjoined from filing any paper or pleading until they comply with these sanctions.

In addition, the court held that regardless of whether they are found in contempt of court, their public use of the grievance procedure; their law suit against the trustee and Passman & Jones; and their law suit against parties to a federal court settlement of litigation appear to have been intended to undermine the administration of these cases, amounting to an abuse of process.

On the eve of the hearing on the order to show cause, Roberdeau and Geisler moved the court to continue the hearing.

Alternatively, they moved the court to either excuse their appearances or permit them to appear telephonically. By order entered August 13, 2001, the court denied that motion.

The court held the hearing on the order to show cause on August 14, 2001. At the hearing, neither Roberdeau nor Geisler appeared in person or by counsel. However, they did file a written response.

The court has considered the evidentiary record on the motion for sanctions on June 12, 2001, the evidentiary record on the show cause hearing on August 14, 2001, and the written pleadings. Additionally, the court adopts and incorporates the findings of fact contained in the court's memorandum opinion entered June 25, 2001. Copy attached.

Rubin came to the bankruptcy cases believing that Roberdeau and Geisler had defrauded him to the tune of $6,000,000. The parties had been engaged in extensive and bitter pre-petition litigation. The core of that litigation remains on appeal in the New York state judicial system. The bitterness continued into the bankruptcy cases. Briarpatch and Rubin retained local and experienced bankruptcy counsel, attorney Hendricks and his law firm, to represent them in these bankruptcy cases before this court. Hendricks had none of the baggage of bitterness that traveled with the litigation. Against that background, Roberdeau and Geisler, on the eve of the settlement conference, publicly

attacked the reputation and integrity of Briarpatch's and Rubin's local counsel. They filed a grievance against Hendricks with the State Bar and then, in direct violation of the State Bar's grievance procedure, publicly disseminated the grievance at a time when it would affect the settlement negotiations.

As discussed in the attached memorandum opinion Roberdeau and Geisler disseminated the grievance to a variety of persons. However, they declined to submit themselves to an examination before this court to explain their conduct. In their written response, Roberdeau and Geisler state that they felt aggrieved by Hendricks' overzealous advocacy, and they unintentionally erred in publicly disseminating the grievance. To paraphrase Justice Cardozo, a lawyer authorized to practice before a court holds "a privilege burdened with conditions" and is answerable to the court. In re Rouss, 116 N.E. 782, 783 (N.Y. 1917). Thus, if Roberdeau and Geisler believed that Hendricks' advocacy over-stepped professional bounds, then they could have sought relief from this court. Furthermore, the court does not accept Roberdeau's and Geisler's written contention that they did not understand that the grievance procedure was a confidential process. They are sophisticated and clever people who appear to act deliberately to achieve certain objectives. Moreover, as discussed below, they have used other litigation to accomplish ulterior motives.

Rubin could not have been expected to make concessions when his attorney had been publicly attacked and undermined by Roberdeau and Geisler. Hendricks could neither undo nor mitigate the impact of the public dissemination. Yet, with the threat of a grievance process in another venue, Roberdeau and Geisler could chill Hendricks in his advocacy, thereby shielding themselves from having to respond to overtures for a settlement. Roberdeau and Geisler have failed to show that they did not violate this court's order to negotiate in good faith and that they did not act to frustrate the court's directive concerning the administration of the bankruptcy cases. Thus, Roberdeau and Geisler have not shown cause why they should not be held in civil contempt of court.

The court may draw inferences adverse to Roberdeau's and Geisler's written contentions from their decision not to personally appear before this court on June 12, 2001, and August 14, 2001, to testify. Therefore, the court infers that they chose not to appear to avoid testifying before this court under oath and penalty of perjury.

The court finds that Roberdeau and Geisler misused the grievance process to undermine the settlement efforts ordered by this court. The court finds that the timing and public dissemination of the grievance allegations was designed to influence and chill Hendricks' advocacy and to gain leverage in

the settlement discussions. In effect, Roberdeau and Geisler, under the veil of the grievance process, poisoned the atmosphere of the settlement conference.

The court conducted the settlement conference on April 25, 2001. That conference did not result, obviously, in a settlement of issues among Roberdeau and Geisler and the parties in interest in their bankruptcy cases. Briarpatch and Rubin had been engaged in related litigation with Stephen B. Pate, all of whom are creditors of Roberdeau and Geisler. Briarpatch, Rubin and Pate were able to settle their dispute. In fact, they announced their settlement for the record. To ensure that the settlement did not impact the bankruptcy estates, the trustee was present when the court accepted the settlement on the record. Ultimately, the settlement was announced, on the record, in open court following the global settlement conference.

Following that settlement, Roberdeau and Geisler filed a law suit in the United States District Court for the Southern District of New York, case no. 01-CV-4767, against the trustee, the law firm of which he is a member, Passman & Jones, Pate, Briarpatch, and Rubin. Seidel testified that Roberdeau and Geisler constantly lodged threats against him. Pate's counsel complained that Roberdeau and Geisler only sued Pate because he agreed to settle his disputes with Briarpatch and Rubin.

It is not within the province of this court to adjudicate the litigation in New York. But this court may, and indeed must, assess whether Roberdeau and Geisler commenced that litigation to either affect or gain leverage in their bankruptcy cases. The trustee filed a motion for sanctions in this court. Roberdeau and Geisler then dismissed without prejudice the complaint against Seidel and Passman & Jones. But, nevertheless, they appear to this court to have brought the suit to obtain an inappropriate leverage from which to extract or extort a concession from the trustee and to chill the trustee's efforts. Passman & Jones have not been retained as counsel by the trustee in these bankruptcy cases. Therefore, Roberdeau and Geisler had no arguable basis to file suit against them. However, Seidel, the trustee, obtained default judgments against Roberdeau and Geisler denying their discharges. Roberdeau and Geisler have filed motions for new trials of the complaints objecting to their discharge. It appears to this court that by suing Seidel in New York, and dragging Passman & Jones into that suit, Roberdeau and Geisler positioned themselves to use the suit as leverage in negotiations with Seidel regarding the motions for new trials of the discharge complaints. Thus, it appears to this court that Roberdeau and Geisler have used litigation in one venue to extract or extort a concession in litigation pending in another venue.

In addition, the litigation against Pate and Briarpatch appears to be intended to chill their activities to implement their settlement. Roberdeau and Geisler have sent the message to parties in interest that they will pay a price if they elect to settle litigation related to Roberdeau and Geisler. To this court, Roberdeau and Geisler have used the legal process to abuse and harass parties in interest, in these bankruptcy cases, for actions they have taken in connection with and related to these cases.

In their written response, Roberdeau and Geisler contend that they believed the Pate-Briarpatch settlement converted their personal employment rights. If the court accepts that written statement, then Roberdeau and Geisler had no valid basis to commence litigation against either the trustee or the law firm of which he is a member. The trustee only observed the announcement of the settlement on the record to protect the interests of the bankruptcy estates. However, Roberdeau and Geisler blame the trustee for halting their professional lives for a year and a half. Roberdeau and Geisler need to confront themselves for a change. They brought their substantial debt and their complex litigation into these bankruptcy cases. The trustee did not create and cannot solve their problems. Roberdeau and Geisler could have used the bankruptcy process, which they voluntarily initiated, to resolve disputes and obtain fresh starts. However,

they have merely compounded their problems. Roberdeau and Geisler plead that they have been under stress. The court accepts that written statement. However, the court has yet to meet debtors without stress. Moreover, stressful lives do not excuse abusive use of legal process.

Roberdeau and Geisler have not directly violated a court order. Roberdeau and Geisler are both too smart and too clever to explicitly and directly violate a court order. But that does not prevent a court from finding that their actions abused the legal process and thereby undermined a court order. To be legitimate and effective, the integrity of the judicial process must be preserved. The presiding judge has a duty to prevent litigants from acting to undermine the effectiveness and legitimacy of the judicial process. In its efforts to resolve multiple disputes involving Roberdeau and Geisler, this court mandated a settlement conference. In furtherance of the conference, the court extended considerable effort to structure alternative but global schemes to resolve these multiple disputes. The court directed that the parties approach the settlement in good faith.

Federal courts encourage settlements. Briarpatch, Rubin and Pate settled their dispute in the context of the settlement conference ordered by this court. The trustee listened to the statement of the settlement terms on the record to assure that

the settlement did not effect the bankruptcy estates. This court accepted the settlement, reserving, of course, its actual implementation for presentation to the district court in New York.

But Roberdeau and Geisler undermined the efficacy of the court's settlement order by their abusive use of the grievance process, and then compounded the abuse by their federal court complaint. By publicly attacking local counsel's reputation and integrity, Roberdeau and Geisler forced Rubin and his counsel into a protective posture that prevented any dispute resolution other than a complete divorce of their relationship. As Roberdeau and Geisler had no interest in pursuing a complete divorce, and thereby waiving claims they may have to certain literary rights, poisoning the well relieved them of the burden of confronting difficult but unwanted scenarios.

With calculated deviousness, Roberdeau and Geisler accomplished indirectly what they could not do directly. They undermined the court order. To this court, they may have just as well shredded the court's order. In effect, their conduct achieved the same result.

The trustee and his law firm are located in Dallas. Pate is in Houston. Roberdeau and Geisler voluntarily commenced their bankruptcy cases in Texas. However, they commenced the abusive litigation in New York. Again, Roberdeau and Geisler did not

directly violate a court order regarding the settlement. Rather, they commenced litigation against the settling parties, the trustee, and his law firm. Roberdeau and Geisler thereby delivered a message to persons with whom they have disputes: basically, if you resolve your differences, then we will punish you by dragging you into a law suit in a venue far removed from your premises. Roberdeau and Geisler have extracted a price for entering a settlement in a process mandated by a federal court. If the court does not sanction their conduct, then Roberdeau's and Geisler's activities will undermine the efficacy of the federal court and the integrity of the judicial process.

Beyond that, the litigation postures Roberdeau and Geisler to extract a concession from the trustee and their creditors. Specifically, if they support Roberdeau's and Geisler's efforts to obtain a new trial on the trustee's complaints objecting to their discharges, then Roberdeau and Geisler will withdraw outstanding litigation. This unseemly abuse of process cannot be tolerated by the bankruptcy court presiding over their bankruptcy cases.

This court has also considered that the State Bar of Texas and the United States District Court for the Southern District of New York present venues for addressing abusive procedures or litigation commenced before them. Regardless of the remedies available from those tribunals, this court has a duty to preserve

the integrity of the bankruptcy process and to prevent the undermining of this court's orders and procedures.

The integrity of the administration of these bankruptcy cases requires that Roberdeau and Geisler be sanctioned for their abusive conduct. Their abuse of process amounts to a contempt of this court just as effectively as if Roberdeau and Geisler shredded this court's settlement order. Courts cannot tolerate the use of the legal process to chill legitimate functions of parties appearing in bankruptcy cases. Roberdeau and Geisler must learn that judicial and administrative processes may not be used to harass, chill, or extort concessions from their opponents in other venues. Roberdeau and Geisler must realize that if they have a right to commence a grievance procedure or litigation, then they have a correlative duty not to abuse the process. "Like any other pastime, recreational litigation has its price." In the Matter of United Markets Int'l, Inc., 24 F.3d 650, 656 (5th Cir. 1994).

Based on the foregoing, the court finds that Roberdeau and Geisler published their grievance against attorney Hendricks to chill legitimate advocacy before this court and to undermine the settlement conference mandated by this court's order entered March 8, 2001. The court further finds that Roberdeau and Geisler have undermined the administration of these bankruptcy cases by their public use of the grievance procedure, by their

law suit against the trustee and Passman & Jones, and by their law suit against their creditors who settled federal court litigation in settlement conferences mandated by this court.

A bankruptcy court may issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the Bankruptcy Code. See Placid Ref. Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.), 108 F.3d 609, 613 (5th Cir. 1997) (citing 11 U.S.C. §105). The court has inherent power to sanction a litigant for bad faith conduct. See Chambers v. NASCO, Inc., 501 U.S. 32 (1991). The majesty of the rule of law compels that knowing and deliberate violations of court orders be sanctioned by contempt. See Offutt v. United States, 348 U.S. 11, 14 (1954). The court should use the least severe sanction to fulfill the purpose of enforcing court orders and deterring bad faith litigation tactics and practices. See Chambers, 501 U.S. at 44-45; Matter of Dragoo, 186 F.3d 614, 616 (5th Cir. 1999); American Airlines, Inc. v. Allied Pilots Ass'n, 968 F.2d 523, 533 (5th Cir. 1992).

As the Supreme Court recognized in Chambers, 501 U.S. at 46-49, the court's inherent power to sanction bad faith conduct does not negate sanctions imposed by the Federal Rules of Civil Procedure. The court may deny relief sought on motions in a case for abuse of process. See, e.g., Fed. R. Civ. P. 16 and 37;

Thomas v. Capital Security Services, Inc., 836 F.2d 866, 875 (5th Cir. 1988)(en banc).

The sanction must be tailored to fit the particular wrong. Thomas v. Capital Sec. Servs., Inc., 836 F.2d at 877. Therefore, the court must consider: (1) what conduct is being punished or is sought to be deterred by the sanction; (2) what expenses or costs were caused by the violation; (3) whether the costs or expenses were reasonable; and (4) whether the sanction is the least severe sanction adequate to achieve the purpose of the procedure under which it is imposed. Topalian v. Ehrman, 3 F.3d 931, 936-37 (5th Cir. 1993). To determine the least severe sanction to achieve the purpose, the court may consider a fine, an award of reasonable attorney's fees and expenses, preclusion of claims or defenses or evidence, dismissal or denial of an action, injunctive relief limiting a person's future access to the courts, a contempt citation, and permitting adverse inferences from abusive actions. Carroll v. Jaques, 926 F. Supp. 1282, 1291 (E.D. Tex. 1996).

The court must assess sanctions that will deter the use of administrative and judicial procedures to abuse the bankruptcy process and undermine court orders. Myers v. Akard, 186 F.3d 614, 616 (5th Cir. 1999) (noting that sanctions are intended to deter and punish, as well as compensate opposing parties). Therefore, at a minimum, Roberdeau and Geisler must withdraw the

grievance procedure and litigation that caused the abuse of the bankruptcy process. Roberdeau and Geisler have withdrawn the federal district court complaint against Seidel and Passman & Jones. Thus, to remedy their abusive conduct, Roberdeau and Geisler must also withdraw the complaint against Pate, Briarpatch, and Rubin.

However, Briarpatch, Seidel and Passman & Jones have been damaged by the misconduct. Seidel's damages will be borne by Roberdeau's and Geisler's creditors, as expenses of administration of the bankruptcy estates. Consequently, Roberdeau's and Geisler's conduct has damaged the bankruptcy estates as well as Briarpatch, Seidel and Passman & Jones. To deter their conduct, Roberdeau and Geisler must, in addition to withdrawing the grievance and the federal court complaint, compensate Briarpatch, Seidel and Passman & Jones for their damages.

Briarpatch and Rubin have been represented by Cavazos Hendricks Poirot & Dewey, P.C., and Barry Goldin. Cavazos Hendricks has incurred $19,866 in fees and expenses defending the grievance and seeking relief from this court. Goldin has incurred $28,791 in fees and expenses, including travel and related expenses for attending two evidentiary hearings before this court.

Seidel and Passman & Jones have incurred $23,904 in defending the federal court litigation and seeking relief from this court, including attending hearings before this court.

Applying a lodestar analysis, the court finds the fees reasonable and the expenses actual and necessary.

If Roberdeau and Geisler withdraw the grievance and the complaint and pay the damages, then they will have remedied the abuse and purged any contempt. But, if they fail to take those actions, then the court must apply additional sanctions to deter their conduct and induce them to remedy their conduct as provided in this order.

Roberdeau and Geisler have filed motions seeking affirmative relief from this court, including: (1) dismissal of these bankruptcy cases; (2) discovery from Briarpatch and Rubin; (3) vacating judgments denying their discharges; (4) discovery abuse sanctions against Briarpatch and Rubin; (5) vacating a lift stay order; and (6) removal of the trustee. Abusive use of the grievance procedure and federal court litigation that undermines the bankruptcy court precludes and estops Roberdeau and Geisler from seeking affirmative relief from the bankruptcy court, unless they remedy the abuse. Roberdeau and Geisler cannot seek affirmative recovery from this court while undermining this court's settlement order, leveraging the trustee for concessions, and punishing parties for using a settlement forum ordered by

this court to settle disputes. Accordingly, if Roberdeau and Geisler do not withdraw the grievance and the federal court complaint and pay the damages within 45 days, then all of their pending motions before this court will be denied with prejudice.

Briarpatch and Rubin request that as a further deterrent, Roberdeau and Geisler be enjoined from commencing litigation against any person involved in the bankruptcy cases without leave of this court. Briarpatch commented that Roberdeau and Geisler have threatened litigation if they settled with a third party. Seidel observed that Roberdeau and Geisler constantly threaten him with litigation. Pate argued that Roberdeau and Geisler use law suits to extort leverage.

However, through means not known by this court, Roberdeau and Geisler raised capital to purchase assets of this bankruptcy estate at auction. Those assets may only amount to causes of action. The pre-petition litigation between Briarpatch and Rubin, on the one hand, and Roberdeau and Geisler, on the other, remains pending in a non-bankruptcy court. Therefore, even if appropriate to deter abuse, under these circumstances, an injunction would not be workable.

Nevertheless, the court must ensure the deterrence of abusive conduct. Withdrawal of the grievance and the federal court complaint and payment of damages remedies the abuse and would have the desired deterrent effect. But, until Roberdeau

and Geisler perform those remedial requirements, the court may close the courthouse door to Roberdeau and Geisler. Accordingly, the court will enjoin Roberdeau and Geisler from filing any pleading or paper, except for an objection to this order filed pursuant to Bankruptcy Rules 9020 and 9033, until they have withdrawn the grievance and the litigation and paid the damages. See In the Matter of United Markets Int'l, Inc., 24 F.3d 650, 653-56 (5th Cir. 1994); Pickens v. Lockheed Corp., 990 F.2d 1488 (5th Cir. 1993). As a matter of comity and sound judicial administration, this court will request that all courts, state and federal, recognize and honor this order in their respective jurisdictions. This will ensure that Roberdeau and Geisler realize that other courts are not open to them to either deviously abuse persons involved in disputes with them or undermine the integrity and efficacy of other courts.

Based on the foregoing,

IT IS ORDERED that the motion for an award of sanctions for abuse of process against John Roberdeau and Robert M. Geisler is **GRANTED**, and, alternatively, that John Roberdeau and Robert M. Geisler are in contempt of this court for undermining an order of this court and the integrity of the settlement process mandated by that order.

IT IS FURTHER ORDERED that as sanctions and to remedy the contempt and deter the abusive conduct:

1. John Roberdeau and Robert M. Geisler shall present an order of dismissal of case no. 01-CV-4767, currently pending in the United States District Court for the Southern District of New York, which dismisses all causes of action brought by them against Stephen B. Pate, Pate & Pate Enterprises, Briarpatch Limited L.P., Gerard F. Rubin, Scott M. Seidel and Passman & Jones.

2. John Roberdeau and Robert M. Geisler shall present a letter to the Office of Chief Disciplinary Council, State Bar of Texas, dismissing with prejudice their grievance complaint against Charles B. Hendricks.

3. Briarpatch Limited, L.P., and Gerard F. Rubin shall have a judgment against John Roberdeau and Robert M. Geisler, jointly and severally, for $48,657 to compensate them for their costs and expenses incurred as a result of the abusive activities. The judgment shall bear interest as provided by federal law.

4. Scott Seidel and Passman & Jones shall have a judgment against John Roberdeau and Robert M. Geisler, jointly and severally, for $23,904 to compensate them and thereby the bankruptcy estates for their costs and expenses incurred as a result of the abusive activities. The judgment shall bear interest as provided by federal law.

5. The clerk of court shall not accept for filing any pleading or paper filed by John Roberdeau and Robert M. Geisler until they have complied with the sanctions in the above four numbered paragraphs. This order shall not apply to an objection filed pursuant to Bankruptcy Rules 9020 and 9033. As a matter of comity and sound judicial administration, this court respectfully requests that all courts, state and federal, recognize and honor this order in their respective jurisdictions.

IT IS FURTHER ORDERED that if the above grievance and litigation are not withdrawn and the above monetary sanctions not paid within 45 days from the date of service of this order, then the court shall deny with prejudice all pending motions filed by John Roberdeau and Robert M. Geisler seeking relief in these bankruptcy cases or in related adversary proceedings pending before this court.

IT IS FURTHER ORDERED that Scott Seidel and counsel for Briarpatch Limited, L.P., and Gerard F. Rubin shall file a certification with this court if John Roberdeau and Robert M. Geisler comply with the requirements of the above first four numbered paragraphs of this order.

IT IS FURTHER ORDERED that the clerk of this court shall serve forthwith a copy of this order on John Roberdeau and on Robert M. Geisler.

John Roberdeau and Robert M. Geisler are hereby noticed that this order, which shall be treated as a contempt of court order, shall be effective 10 days after service and shall have the same force and effect as an order of contempt entered by the United States District Court unless, within the 10 day period, John Roberdeau and/or Robert M. Geisler serve and file objections prepared in the manner provided in Bankruptcy Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.

If timely objections are not filed, then counsel for Briarpatch Limited, L.P., and Gerard F. Rubin and Scott Seidel shall submit proposed judgments consistent with this order. If timely objections are filed, then the parties shall proceed as directed by the United States District Court for the Northern District of Texas.

Signed this _____ day of September, 2001.

Steven A. Felsenthal
United States Bankruptcy Judge